

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WISCONSIN  
3 \* \* \* \* \*  
4 ESTATE OF MICHAEL EDWARD BELL, by Special  
5 Administrator Michael Martin Bell, KIM MARIE  
6 BELL, MICHAEL MARTIN BELL, and SHANTAE BELL,  
7 Plaintiffs,  
8 vs. Case No. 05-C-1176  
9 OFFICER ERICH R. STRAUSBAUGH, OFFICER ERICH S.  
10 WEIDNER, LIEUTENANT DAVID H. KRUEGER, OFFICER  
11 ALBERT B. GONZALES, KENOSHA POLICE DEPARTMENT,  
12 CITY OF KENOSHA,

13 Defendants.  
14 \* \* \* \* \*

15 VIDEOTAPED DEPOSITION OF DANIEL STRASH  
16

17 TAKEN AT: Kenosha City Hall  
18 LOCATED AT: 625 52nd Street  
19 Kenosha, WI

20 June 29, 2007  
21 9:11 a.m. to 10:33 a.m.  
22 REPORTED BY ANITA K. FOSS  
23 REGISTERED PROFESSIONAL REPORTER

24 \* \* \* \* \*

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1 A P P E A R A N C E S

2 CANNON & DUNPHY, S.C., by  
Mr. Patrick O. Dunphy  
3 and Mr. Brett Eckstein  
595 North Barker Road  
4 Brookfield, WI 53008-1750  
Appearing on behalf of the Plaintiffs.

5  
6 GUNTA & REAK, SC, by  
Mr. Kevin P. Reak  
7 219 North Milwaukee Street, 5th Floor  
Milwaukee, WI 53202-5818  
8 Appearing on behalf of the Defendants.  
9 ALSO PRESENT: Captain Randy Berner

10

I N D E X

11

12 Examination by Page  
13 Mr. Dunphy. . . . . 4

14

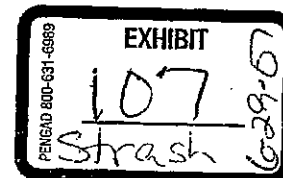
15 E X H I B I T S

16 Page  
Exhibit No. Description Identified  
17  
18 105 Supplementary report . . . . .7  
19 106 Supplementary report dated  
12/14/04. . . . .13  
20 107 Certified copy of statement  
given by Detective Krueger. . .41

21

(Original Exhibits attached to original  
22 transcript. Copies provided to all counsel.)  
23  
24  
25

KENOSHA POLICE DEPARTMENT  
Statement



DATE OF SUPPLEMENT:  
11/09/04

DATE & TIME OF INCIDENT:  
11/09/04 @ 0211 hours

PAGE NUMBER: CASE NUMBER:  
1 of 3 04-156477

NAME: DAVID H KRUEGER #258

DOB: 11-20-57 SEX/RACE: M/W

ADDRESS: 1000-55 ST KENOSHA, WI 53140

TELEPHONE: 605-5235

EMPLOYER:

BUSINESS TELEPHONE:

This statement is being typed for me by Detective Dave Niccolai of the Kenosha Police Department and is a true and accurate account of my statement to him.

I was on the road on routine patrol on Lincoln Rd and 80<sup>th</sup> ST and I heard an officer on the radio asking for help. I think the Officer was Erich Weidner and he sounded distressed. I knew immediately from the sound of his voice that something was wrong and he needed assistance. I didn't know what kind of call he was on or who he was with at the time. Dispatch got on the radio and said "Any squad in the area of 8300 blk of 14<sup>th</sup> AV". Another squad said they were going and then I informed dispatch that I was en route. I turned E/B on 80<sup>th</sup> ST and activated my red and blue emergency lights and siren. I heard an officer say something like, "I need help now" and dispatch asked if I heard that and I told them I was at 80<sup>th</sup> ST and 17<sup>th</sup> AV. I continued to 14<sup>th</sup> AV and turned South on 14 AV and I saw the emergency lights from the squads and I realized that there were two squads there. As I was rolling up in front one of the officers screamed in the radio that they were in the back yard. I informed dispatch that I was on the scene and pulled my squad up and stopped in the middle of the street right next to one of the officers cars. I still didn't know why they were there and nothing caught my attention as I pulled up. I was just trying to find out where the officers were. I didn't know what side of the street they were on and I grabbed my flashlight and went to the West side. I just took a chance because I didn't know where they were. Officer Gonzales pulled up behind me with his siren going. I motioned to him with my hand that he should check the East side yards. I ran around the South side of the house at 8310-14<sup>th</sup> AV and ran to the back yard. I could hear a lady screaming but I don't know if she was saying anything. I still didn't see the officers but I ran in the direction of the lady screaming. There were two ladies standing at the base of the stairs of the deck attached to the house. They were looking towards the garage in between a parked car and a trailer with Wave Runners on it, in the driveway. I still couldn't see the officers until I ran up to the ladies. When I got up by the trailer I saw PO's Strausbaugh and Weidner wrestling with a guy on the ground. They looked like they were doing all they could do to just hold on to him. I didn't see any punches or knee strikes and it looked like they were exhausted. I told the ladies to stay back because they were hysterical and I feared they would interfere with the officers. One of the ladies was screaming something about the guy being her son. One of the

I have made the above statement without any threats or promises. It is my desire to state the true facts as to this incident. I have read the above statement and find it is true and correct.

Witness:

*Det. D. Niccolai*

Signed:

*H. Krueger*

Date: 11-9-04

RECORDS BUREAU

# KENOSHA POLICE DEPARTMENT

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two officers yelled to me that they couldn't get him cuffed and for me to "Taze him". I took my Tazer (#5, serial #X00-045820) out and removed the cartridge from the front. The guy they were fighting with started to stand up with both officers still having their hands on him. The guy's shirt was pulled up and his ribs and stomach were exposed. I gave the guy a "Drive stun", Tazing him in the ribs as he was standing up. He continued getting up and started moving in a NW direction towards the garage. When he got up the Tazer broke contact with him so I reholstered my Tazer and grabbed him in a "Bear hug". I could smell an odor of an alcoholic beverage on his breath when I grabbed him. I was behind him and had him around his shoulders but he was still able to move his arms. He was trying to get away and I heard Strausbaugh scream something like "he has my gun" or "He's got his hand on my gun". Weidner was also yelling at this time but I don't know what he said. I pinned him against the left front fender of the car and his arms were still free. Strausbaugh was to my right and screamed in a high pitched, desperate voice, "He's got my gun, he's got my gun." I had the guy in a bear hug with my head turned to the left. I couldn't see Weidner and I knew Strausbaugh was on my right but I couldn't see what he was doing. While fighting with the guy on the fender I looked up and saw Gonzales standing at the front of the car. I'm not sure where he came from. When Strausbaugh screamed that the guy had his gun, I yelled "If he's got you're gun, we're gonna have to shoot him." While I was yelling this Gonzales drew his gun from his holster and put it to the side of the guy's head. Gonzales yelled, "Does he have your gun?" and Strausbaugh yelled in a high pitched voice, "He's got my gun." While this was all going on I expected to hear a gun shot and one of us was going to get shot. I only had the guy around the shoulders and I couldn't control his arms and I had no idea where his arms were at or if he had Strausbaugh's gun. The guy was trying to push away from the car and I was just trying to hold on to him. With Strausbaugh yelling, "He's got my gun," I thought the guy was going to shoot one of us so I told Gonzales to shoot the guy. Gonzales had his gun pressing against the side of the guy's head and he pulled the trigger. The gun didn't fire and I was wondering why it didn't go off and then I saw Gonzales back his gun away slightly from the guy's head and then the gun went off. It was almost simultaneously from when I told Gonzales to shoot to when he discharged his gun. The guy was bent over the front of the car and I was still behind him but in more of an upright position. Gonzales was positioned so his weapon would be discharged away from the officers and toward the windshield of the car we were against. As soon as he fired the guy stopped resisting and slumped over the hood of the car. I held him up with my right hand and I could see he was bleeding profusely from his head. I grabbed my radio with my left hand and I called dispatched and said that I needed rescue here right away. Then I called operations and informed them to notify Capt. Berner that we had an officer involved shooting. I checked with the other officers and made sure everyone else was OK. Strausbaugh and Gonzales both said they were OK and I don't remember seeing Weidner. From the time I arrived on the scene until rescue was called was about two minutes. Shortly after this PO Beller arrived. Beller climbed the fence to the North to assist. PO's DeJonge and DeMario arrived and I told them to take the

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Witness:

*Det. D. M. 254*

Signed: *Lt. K. Kneez*

Date: *11-9-04*

RECORDS BUREAU

# KENOSHA POLICE DEPARTMENT

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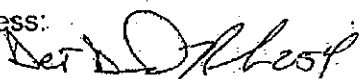
3 of 3 04-156477

two ladies in the house and stay with them. I held the guy against the car and then slowly lowered him to the ground. I laid him down on his side with his face down. He was still breathing because I could see his chest moving but his breathing was very labored. He was gurgling and snorting while he was on the ground. I could hear the sirens from the rescue squad approaching and I monitored the guy until rescue arrived. DeJonge came back outside and I told him to secure the scene. PO Metzler arrived and helped secure the scene. Rescue arrived and started attending to him. I heard one of the paramedics say "He's down to 60" and then "He's back up to 100." They placed him on a stretcher and put him in the ambulance. They worked on him for several minutes at the scene and then transported him to KMH. I sent Strausbaugh and Gonzales back to the PSB. Sgt. Maccari was on the scene and took control of the scene. I stayed on the scene until DA Jambois, AC Pataska and Capt. Berner arrived and I informed them of the situation. Then I cleared the scene and came to the Detective Bureau. While in the Detective Bureau I discovered that my Tazer holster was broken. The holster was in proper working condition at the start of my shift and must have been damaged during the struggle.



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Witness:



Signed: Lt. Kruiger

Date: 11-9-04

RECORDS BUREAU